

DANIEL G. SWANSON, SBN 116556
dswanson@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: 213.229.7000
Facsimile: 213.229.7520

CYNTHIA E. RICHMAN (D.C. Bar No.
492089; *pro hac vice*)
crichman@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539

JULIAN W. KLEINBRODT, SBN 302085
jkleinbrodt@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
Telephone: 415.393.8200
Facsimile: 415.393.8306

MARK A. PERRY, SBN 212532
mark.perry@weil.com
JOSHUA M. WESNESKI (D.C. Bar No.
1500231; *pro hac vice*)
joshua.wesneski@weil.com
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW, Suite 600
Washington, DC 20036
Telephone: 202.682.7000
Facsimile: 202.857.0940

MORGAN D. MACBRIDE, SBN 301248
morgan.macbride@weil.com
WEIL, GOTSHAL & MANGES LLP
Redwood Shores Pkwy, 4th Floor
Redwood Shores, CA 94065
Telephone: 650.802.3044
Facsimile: 650.802.3100

Attorneys for Defendant APPLE INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

EPIC GAMES, INC.

Plaintiff, Counter-defendant
v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF MARK A. PERRY IN
SUPPORT OF APPLE INC.'S STATEMENT
IN SUPPORT OF ADMINISTRATIVE
MOTION TO SEAL**

The Honorable Thomas S. Hixson

1 I, Mark A. Perry, hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the Bar
3 of this Court. I am a partner at the law firm Weil, Gotshal & Manges LLP, counsel of record for Apple
4 Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary and confidential
5 information based on my personal experience representing Apple. I have personal knowledge of the
6 facts stated below and, if called as a witness, would testify competently thereto. I submit this declaration
7 in support of Apple’s Statement in Support of Administrative Motion to Seal.¹

8 2. I am aware that the law of this Circuit allows information to be filed under seal for good
9 cause or in certain compelling circumstances. I also understand that courts routinely seal filings where
10 documents include a company’s trade secrets, internal codenames, confidential research and
11 development, personally identifiable information, or other commercially sensitive information. I
12 understand that this Court has broad latitude to prevent the public disclosure of these categories of
13 commercially sensitive information.

14 3. Apple operates in an intensely competitive environment. Apple has serious and
15 legitimate concerns that competitors will be quick to capitalize on any release of Apple’s highly sensitive
16 information in order to gain competitive advantage. As such, Apple takes extensive measures to protect
17 the confidentiality of its information.

18 4. Apple has carefully reviewed the exhibits to Epic Games, Inc.’s Administrative Motion
19 to Consider Whether Another Party’s Material Should Be Sealed Pursuant to Civil Local Rule 79-5
20 (“Epic’s Motion”), Dkt. 1148, and now proposes to partially seal information therein that, if disclosed,
21 could harm Apple’s competitive business interests. Specifically, Apple seeks to seal Exhibits A–B in
22 their entirety and to partially seal Exhibit C.

23 5. Apple seeks to seal Exhibits A–B to Epic’s Motion because the documents contain
24

25
26 ¹ Courts in the Ninth Circuit routinely grant motions to seal based on declarations of counsel. *See*,
27 *e.g.*, *In re Apple Securities Litigation*, 19-cv-02033-YGR, Dkt. 223 (N.D. Cal.); *In re Qualcomm Litig.*,
No. 17-cv-00108-GPC, Dkt. 398-1 (S.D. Cal. Mar. 26, 2018); *Avago Techs. U.S. Inc. v. Iptronics Inc.*,
No. 10-cv-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc. v. OpenTV Inc.*, No. 13-cv-
00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2013). If the Court deems this declaration insufficient, Apple
28 respectfully requests that it be permitted to file a further declaration supporting filing under seal.

confidential information regarding Apple's business strategy in connection with regulatory changes and requirements in the Netherlands and the European Union more broadly. In particular, Exhibit A is a Slack document in which Apple employees discuss the overlap between new regulatory requirements in these jurisdictions and strategies for implementing changes responsive to those requirements. Exhibit B is another Slack document containing a similar discussion, with additional commentary regarding long-term business strategy and solutions for addressing changing regulatory conditions. Public disclosure of these documents would expose Apple's confidential business strategy in response to these emerging regulatory issues. Because the business strategy permeates the entirety of Exhibits A–B, the exhibits should be sealed in their entirety.

6. Apple seeks to partially seal Exhibit C to Epic's Motion because the document contains competitively sensitive, non-public information regarding Apple's use of certain confidential codenames related to new product developments. Apple has narrowly-tailored its sealing request as to maximize the public's access to court documents without jeopardizing Apple's business interests. The remainder of Exhibit C remains unredacted.

7. Below is a chart detailing the portions of the exhibits sealable for the reasons explained herein, as well as in Apple's statement.

Portion of Document Sought to be Sealed	Document Title	Reason to Seal
Entirety of document	Exhibit A to Epic's Motion	Reflects non-public Apple business strategy
Entirety of document	Exhibit B to Epic's Motion	Reflects non-public Apple business strategy
Redacted words in first and fifth entries on page 1	Exhibit C to Epic's Motion	Reflects non-public Apple business strategy
Redacted word in first entry on page 2	Exhibit C to Epic's Motion	Reflects non-public Apple business strategy

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and
2 correct. Executed this 6th of February 2025, in Washington, D.C.

3
4 Dated: February 6, 2025

Respectfully submitted,

5
6 By: /s/ Mark A. Perry

7 Mark A. Perry
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28